

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|----------------------------------|---|------------------------|
| FACTORY MUTUAL INSURANCE |) | CASE NO. 8:09-CV-159 |
| COMPANY, d/b/a MUTUAL BOILER RE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | DEFENDANTS' MOTION FOR |
| |) | SUMMARY JUDGMENT |
| NEBRASKA BEEF, INC. and |) | |
| SOUTH OMAHA INVESTORS PACK, |) | |
| L.L.C., |) | |
| |) | |
| Defendants. |) | |

COME NOW the defendants, NEBRASKA BEEF, INC. and SOUTH OMAHA INVESTORS PACK, L.L.C. (hereinafter collectively "Nebraska Beef"), and move the Court pursuant to Fed. R. Civ. P. 56 for an order granting summary judgment in their favor.

In support of this motion Nebraska Beef states that the pleadings, discovery, depositions and affidavits attached to the index of evidence filed herewith all demonstrate that there exists no genuine issue of material fact on plaintiff's declaratory judgment cause of action.

Nebraska Beef also states that the evidence attached to the index of evidence demonstrates as a matter of law that Nebraska Beef should prevail on its counter claims against plaintiff for breach of contract and bad faith.

WHEREFORE, Nebraska Beef respectfully moves this Court for an order granting summary judgment in its favor on all its counterclaims; for an order dismissing plaintiff's claims in total and with prejudice; for an order setting a trial date for a determination of all general,

special and punitive damages incurred by Nebraska Beef; and for further relief as the Court deems just and proper.

NEBRASKA BEEF, INC. and SOUTH OMAHA
INVESTORS PACK, L.L.C., Defendants,

By: /s/ Anne Marie O'Brien

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December 2009, I caused the foregoing motion to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

Russell E. Yates and Dart M. Winkler
YATES LAW FIRM, LLC
1900 Wazee Street, Suite 203
Denver, CO 80202

and further certify that the above document was sent to the following non-CM/ECF participants via regular United States mail, postage pre-paid:

None

/s/ Anne Marie O'Brien

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